

NOTICE OF PROPOSED RULEMAKING ACTION

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Article 9

Sections 8090, 8091, 8092, 8093, 8094, 8095, 8098, 8099, 8101, 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, and 8102.15

Title 4, Division 11

California Code of Regulations

NOTICE IS HEREBY GIVEN that the California Pollution Control Financing Authority (the “Authority”), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code (the “Act”), proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Proposed Regulatory Action

The Authority proposes to add Sections 8102 through 8102.15 and to amend Sections 8090, 8091, 8092, 8093, 8094, 8095, 8098, 8099 and 8101 of the California Code of Regulations (the “Amended CALReUSE Program Regulations”) concerning the implementation of the CALREUSE Remediation Program and amendments to the CALReUSE Assessment Program (the “Program”). These regulations were readopted on an emergency basis in August 2008. The current rulemaking action would make these changes permanent.

Authority and Reference

Authority: Section 44520, Health and Safety Code. Section 44520(a) authorizes the Authority to adopt necessary regulations relating to brownfields site finance assistance as established by the Act.

Reference: Sections 53545.14, 44525, 44526 (h), 44537.5, 44548(a) and 44548(b) Health and Safety Code. These regulations implement, interpret and make specific Sections 44501, 44502, 44504.1, 44505, 44506, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545, and 53545.14 of the Act, as amended by Senate Bill 86 of 2007, by adding SubArticle 2 Sections 8102 through 8102.15 to Title 4, Division 11, Article 3 of the California Code of Regulations and amending SubArticle 1 Sections 8090, 8091, 8092, 8093, 8094, 8095, 8098, 8099, and 8101 of Title 4, Division 11, Article 3 of the California Code of Regulations.

Informative Digest/Policy Statement Overview

Adoption of these regulations primarily address the statutory mandate, caused by Senate Bill 86 (2007) which established Health and Safety Code 5545.14, to create a brownfield cleanup financing program. The proposed CALReUSE Remediation Program will provide grants and loans to clean up brownfields that promote infill residential and mixed-use development consistent with regional and local land use plans. The regulations also include amendments to the regulations of the existing CALReUSE Brownfield Assessment Program – caused by the 2000 amendments to the Act, affected by Senate Bill 1986 – which are necessary to update the program and create consistency with the new CALReUSE Remediation Program.

Objectives of the Amended CALReUSE Program Regulations. The broad objectives and policy goals of each section of the Amended CALReUSE Program Regulations are explained below.

Article 9. Establishes the California Recycle Underutilized Sites (CALReUSE) Program.

SubArticle 1. Contains the current CALReUSE Assessment program, as well as shared definitions for the CALReUSE Remediation Program. Certain amendments are set forth as necessary to update the program and create consistency between the Assessment Program and the Remediation Program (SubArticle 2). The proposed amendments are necessary to create consistency between the existing site assessment and the new remediation program; to bring definitions up to date with current statute; to modify the regulations to accommodate anticipated changes in statute; and to modify specific elements of the program structure to strengthen its effectiveness as a brownfield financing tool.

Section 8090. Definitions. Amendments to: 1) expand definitions to include and refer to the new CALReUSE Remediation Program that is primarily set forth in Subarticle 2 [paragraphs (a), (b), (d), (ab), (af), (ah)]; 2) conform with federal law [paragraph (h)]; 3) recognize changes in state law since the section was last amended, and ensure consistency in future changes to state law (and potential future changes) [paragraphs (j), (l), (w), (y), (ag)]; 4) make clarifying modifications that streamline the regulations [paragraphs (ad), (ae)]; and 5) expand the definition of eligible costs for the Assessment Program [paragraph (k)]. Paragraphs are also renumbered as necessitated by the changes.

Section 8091. Brownfield Project Loan Eligibility. An amendment to enact a policy change concerning the eligibility of certain brownfields in the CALReUSE program.

Section 8092. Brownfield Application Content. An amendment to clarify existing procedures.

Section 8093. Application Availability, Submission and Strategic Partner Review. An Amendment modifying the Program's official acronym.

Section 8094. Loan Approval and Commitment Letter. Amendments to enact a policy change regarding the eligibility of certain brownfields in the CALReUSE program and to establish a priority system in reviewing applications involving those sites.

Section 8095. Loan Terms. Amendments to change the interest rate used for loans under the CALReUSE brownfield assessment program and to increase the maximum amounts for loans.

Section 8098. Strategic Partner Reports and Records Retention. Amendments to: clarify reporting requirements and bring consistency to the program (paragraph (a)); conform the regulations with amended definitions (paragraphs (a)(1)(B) and (a)(2)(B)); and to provide additional clarification (paragraphs (a)(3)(A) and (a)(3)(B)).

Section 8099. Technical Assistance. Amendments for conformity with the establishment of the CALReUSE brownfield remediation program (paragraphs (a) and (b)); paragraph (c) was eliminated to reduce redundancy between Section 8099 and the definition of technical assistance in Section 8091 (ah).

Section 8101. Strategic Partner as Applicant or Borrower. Amendments to provide clarification for potential conflict of interest situations.

SubArticle 2. Establishes the CALReUSE Remediation Program. In 2007 the Legislature statutorily required the Authority to administer loans and grants to clean up brownfields to promote infill residential and mixed-use development (Senate Bill 86 (2007); Section 53545.14, Health and Safety Code). The proposed regulations are necessary to carry out this statutory mandate.

Section 8102. Brownfield Infill Project Program Definitions. Establishes definitions to govern construction of SubArticle 2, Article 9.

Section 8102.1. Infill Grant and Infill Loan Eligibility. Establishes the criteria for eligibility of financing. The criteria will ensure, among other things, eligibility of the brownfield, eligibility of the project, eligibility of the costs proposed for financing, and eligibility of the borrower.

Section 8102.2. Infill Application Content. Sets forth the information that must be submitted by an applicant in order to request a grant or loan.

Section 8102.3. Infill Application Availability, Submission and Strategic Partner Review. Establishes a process for obtaining, submitting and reviewing an application to the Program.

Section 8102.4. Infill Grants and Infill Loans. Establishes eligibility and criteria for receiving a grant, eligibility and criteria for receiving a loan, and outlines specific terms of funding.

Section 8102.5. Infill Grant and Infill Loan Approval. Establishes a process for approval of applications and for notification to applicants.

Section 8102.6. Infill Grant and Infill Loan Terms. Establishes the terms and conditions of the grants and loans, including the length of the term, default provisions, and certifications and requirements required of the applicant.

Section 8102.7. Conditions of Funds Disbursement, Funds Disbursement and Loan Repayment Procedures. Sets forth the conditions for disbursing funds, and establishes procedures for funds disbursement and loan repayment.

Section 8102.8. Infill Loan and Infill Grant Extensions. Establishes the conditions under which the term of a loan or grant may be extended.

Section 8102.9. Strategic Partner Reports and Records Retention. Establishes reporting requirements and records retention for Strategic Partners who assist the Authority to provide grants and loans for the Program. The reports are designed to provide the information needed by the Authority to monitor and evaluate the Program, and report to the Legislature as mandated.

Section 8102.10. Allocation of funds to Strategic Partners. Establishes the procedures by which the Authority will allocate funds or specific set-asides for Strategic Partners.

Section 8102.11. Strategic Partner Eligibility and Selection Criteria. Establishes the eligibility and selection criteria for entities wishing to participate as Strategic Partners for the program.

Section 8102.12 Strategic Partner as Applicant, Borrower and/or Grantee. Establishes the roles of the Authority and the Strategic Partner when the Strategic Partner is an applicant for a loan or grant under the Program.

Section 8102.13. Technical Assistance. Provides a mechanism for an applicant to access technical assistance in connection with development of a brownfield.

Section 8102.14. Scoring Criteria. Sets forth the criteria, and their values, by which applications will be assessed prior to funding approval.

Section 8102.15. Geographical Distribution Targets. Establishes geographical targets for the Authority to use as guidelines in allocating funds across the state.

Disclosure Regarding the Proposed Action

The Executive Director of the Authority has made the following determinations regarding the effect of amending the CALReUSE Program Regulations:

Mandate on local agencies or school districts None.

Cost or savings to any state agency None.

Costs to any local agency or school district that must be reimbursed in accordance with Government Code sections 17561 None.

Other non-discretionary cost or savings imposed on local agencies None.

Cost or savings in federal funding to the state None.

Significant effect on housing cost None. While remediation will clean up locations to promote mixed use and residential development, the funds distributed through the Program will have no effect on housing cost.

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states The Amended CalReUSE Program Regulations will have no adverse statewide economic impact.

Assessment regarding effect on jobs/businesses The Amended CALReUSE Program Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California. It will create an opportunity for new work for businesses, but nothing substantial.

Cost impact on a representative private person or business The Agency is not aware of any cost impacts that a representative private person or business would necessarily incur with reasonable compliance with the proposed action.

Business Report As the Amended CALReUSE Program Regulations will not have an effect on creation, elimination, or expansion of business in California; a Business Report is not required.

Small Business The Amended CALReUSE Program Regulations will not have an adverse impact on small business in California as they do not, directly or indirectly, compete with, inhibit, or encourage small business in California.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the Amended CALReUSE Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Amended CALReUSE Program Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Authority invites interested persons to present statements with respect to alternatives to the Amended CALReUSE Regulations during the written comment period for the Authority's consideration.

Agency Contact Person

Written comments, inquiries, and any questions regarding the substance of the Amended CALReUSE Regulations shall be submitted or directed to:

Deana Carrillo, Program Manger
California Pollution Control Financing Authority
915 Capitol Mall, Room 457
Sacramento, California 95814
Telephone: (916) 657-5051
Fax: (916) 657-4821
Email: calreuse@treasurer.ca.gov
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The back-up contact person is:

Robert “Robbie” Biegler
915 Capitol Mall, Room 110
Sacramento, California 95814
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Written Comment Period

Any interested persons, or his or her authorized representative, may submit written comments relevant to the Amended CALReUSE Program Regulations to the Authority. The written comment period on the Amended CALReUSE Program Regulations ends at **5:00pm on November 12, 2008**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for those comments to be considered by the Authority. In the event that changes are made to the Amended CALReUSE Program Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Amended CALReUSE Program Regulations for fifteen (15) calendar days after the date on which such Amended CALReUSE Program Regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in the notice.

Availability of Initial Statement of Reasons, Information re: Proposed Rulemaking, Text of the Proposed Regulations (Express Terms) and Changes to Regulations

The Authority has established a rulemaking file for this regulatory action which contains those items required by law. The file is available for inspection at the Authority’s office

at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Amended CALReUSE Program Regulations. Copies of these items will be available upon request from the Agency Contact Person designated in this Notice or at the Authority's website, located at <http://www.treasurer.ca.gov/cpcfafa/>.

Public Hearing

A public hearing regarding the Amended CALReUSE Program Regulations has been scheduled for Wednesday, November 12, 2008 from 1:00-3:00pm at 915 Capitol Mall, Room 587, Sacramento, CA 95814.

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing the Authority may adopt the Amended CALReUSE Program Regulations substantially as described in this Notice without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Amended CALReUSE Program Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at: <http://www.treasurer.ca.gov/cpcfafa/>.